

REMARKS/ARGUMENTS

Claims 1-4, 7 and 8 are pending. Claims 2 and 4 have been amended. Claim 3 has been cancelled without prejudice. No new matter has been introduced as a result of the entry of these amendments to the claims. Applicants believe claims 1-4, 7, and 8 are in condition for allowance.

Claim 4 has been amended to depend from independent claim 1 due to the cancellation of claim 3 upon which claim 4 was formerly dependent.

Support for the amendments to claim 2 may at least be found in the specification, claims and figures as originally filed.

The Examiner has objected to claim 3 under 37 C.F.R. §1.75(c).

The Examiner has rejected claims 1-3, 7 and 8 under 35 U.S.C. §102(b) as being anticipated by the Jagged Alliance Instruction Manual (hereafter "JA2").

The Examiner has rejected claim 4 under 35 U.S.C. §103(a) as being unpatentable over the JA2, as applied to claims 1-3, 7 and 8, where applicable, in view of U.S. Pat. No. 6,093,105 to Morihira.

Objection to claim 3

The Examiner has objected to claim 3 under 37 C.F.R. §1.75(c).

Applicants have cancelled claim 3 without prejudice. In light of the foregoing, the objection to claim 3 is moot.

Rejection under 35 U.S.C. §102(b)

The Examiner has rejected claims 1-3, 7 and 8 under 35 U.S.C. §102(b) as being anticipated by the Jagged Alliance Instruction Manual (hereafter "JA2").

Applicants' claims 2 and 3 depend from independent claim 1.

Applicants' claims 7 and 8 are independent claims.

The Examiner alleges the reference JA2 teaches generally the elements recited in claims 1-3, 7 and 8 at pages 4-5, 27-32, and 38-41. However, JA2 fails to disclose all of the elements recited in Applicants' independent claims 1, 7 and 8. For example, under the heading "Ending Combat" on page 32 of JA2, JA2 recites in part, "Turn-based combat automatically ends when your mercenaries go for a couple of turns without spotting a live enemy. **The game then switches back to real-time mode.**" (emphasis added). According to this description, the game is not being executed in "real-time mode" during the combat sequences in JA2. In contrast, the game embodied in the elements recited in Applicants' independent claims 1, 7 and 8 does utilize a combat state occurring in real-time mode. Furthermore, due to the explicit instructions in JA2, the idea that "turn-based combat" can possibly occur and be inherent is not conceivable as JA2 explicitly sets forth the fact that "The game then switches back to real-time mode", once turn-based combat automatically ends.

For these reasons, JA2 fails to teach all of the elements recited in Applicants' independent claims 1, 7 and 8.

In light of the foregoing, Applicants respectfully request the Examiner withdraw the rejection against claims 1-3, 7 and 8 and find claims 1-3, 7 and 8 allowable.

Rejection under 35 U.S.C. §103(a)

The Examiner has rejected claim 4 under 35 U.S.C. §103(a) as being unpatentable over the JA2, as applied to claims 1-3, 7 and 8, where applicable, in view of U.S. Pat. No. 6,093,105 to Morihira.

Applicants' claim 4 depends upon independent claim 1.

The Examiner alleges the reference JA2 teaches generally

the elements recited in claims 1-3, 7 and 8 at pages 4-5, 27-32, and 38-41. However, JA2 fails to disclose all of the elements recited in Applicants' independent claim 1. For example, under the heading "Ending Combat" on page 32 of JA2, JA2 recites in part, "Turn-based combat automatically ends when your mercenaries go for a couple of turns without spotting a live enemy. **The game then switches back to real-time mode.**"

(emphasis added). According to this description, the game is not being executed in "real-time mode" during the combat sequences in JA2. In contrast, the game embodied in the elements recited in Applicants' independent claim 1 does utilize a combat state occurring in real-time mode. Furthermore, due to the explicit instructions in JA2, the idea that "turn-based combat" can possibly occur and be inherent is not conceivable as JA2 explicitly sets forth the fact that "The game then switches back to real-time mode", once turn-based combat automatically ends.

Morihiro fails to cure the deficiencies present in JA2.

In addition to, or in the alternative, the Examiner has engaged in hindsight reconstruction and utilized Applicants' claims 1 and 4 as a blueprint for constructing the present rejection under 35 U.S.C. §103(a). As JA2 explicitly teaches that turn-based combat does not take place in real-time mode, the only source of information where the Examiner could find such teaching, suggestion and motivation is Applicants' independent claim 1 and dependent claim 4.

For these reasons, JA2 in view of Morihiro fails to teach, suggest or motivate one of ordinary skill in the art all of the elements of Applicants' claims 1 and 4.

Applicants respectfully request the withdrawal of the rejection against claim 4 under 35 U.S.C. §103(a) and find claim 4 allowable.

CONCLUSION

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any additional fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

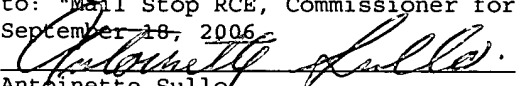
Respectfully submitted,

By 

Ross J. Christie
Attorney for Applicants
Reg. No. 47,492
Tel: (203) 777-6628 x. 116
Fax: (203) 865-0297

Date: September 18, 2006

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on September 18, 2006.


Antoinette Sullo